

HOUSE No. 2825

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to FAIR Plan Credits and Assessments

PETITION OF:

NAME:

Ronald Mariano

DISTRICT/ADDRESS:

3rd Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO FAIR PLAN CREDITS AND ASSESSMENTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 175C of the General Laws, as so appearing, is hereby amended by striking out section 4 and inserting in place thereof the following section:-

Section 4. (a) All insurers licensed to write and engaged in writing in this commonwealth, on a direct basis, basic property insurance or any component thereof in multi-peril policies, shall cooperate in organizing a joint underwriting association which shall provide basic property insurance to eligible applicants who are otherwise unable to obtain such coverage in the voluntary market. Every such insurer shall be a member of the association and remain a member as a condition of its authority to transact such insurance within the commonwealth.

(b) Such association shall be authorized to inspect properties, issue policies, collect premiums and accept payment in installments under plans approved by the commissioner consistent with plans offered by voluntary market insurers and reflecting options for at least 6 payments annually, adjust claims and pay losses on behalf of its members, employ officers, agents and other employees, enter into contracts, sue and be sued in its own name and take all other actions necessary or appropriate to carry out its functions.

(c) The association shall submit to the commissioner a proposed plan of operation, consistent with the purposes of this chapter, to provide for the prompt and efficient provision of basic property insurance to eligible applicants who meet reasonable underwriting standards and are otherwise unable to obtain coverage from insurers in the voluntary market. Such plan of operation shall provide for economical, fair and nondiscriminatory administration including, but not limited to, provisions for preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commissions, reasonable underwriting standards and limits of liability, purchase of reinsurance and procedures for determining amounts of insurance to be provided.

(d) The plan of operation shall be subject to approval by the commissioner and shall take effect 10 days after the commissioner approves it. If the commissioner disapproves the proposed plan of operation, the association shall, within 30 days, submit for review an appropriately revised plan of operation and, if the association fails to submit such a plan or if the revised plan is also disapproved by the commissioner, the commissioner shall promulgate a plan of operation consistent with this section. The association may, on its own initiative or at the request of the commissioner, amend the plan of operation, subject to approval by the commissioner.

(e) (1) All members of the association shall participate in its writing, expenses, profits and losses in the proportion that the premiums written by each such member for basic property insurance, as defined in section one, except premiums for insurance on automobile and manufacturing risks excluded from the plan and that portion of the premiums attributable to the operation of the association during the preceding calendar year, bear to the aggregate premiums for such insurance written in the commonwealth by all members of the association. Such

participation by each insurer in the association shall be determined annually on the basis of such premiums written during the preceding calendar year as disclosed in the annual statements and other reports filed by the insurer with the commissioner.

(2) The participation of each member of the association writing personal lines coverage shall be adjusted based on the homeowners premiums written by such a member in any credit-eligible zip code, defined as any zip code in the commonwealth where the association market share in such zip code exceeds one and one half times the association's statewide market share and further that the association market share in that zip code shall equal or exceed fifteen per cent, averaged over the latest three calendar years, in accordance with the following clauses:

(i) The participation ratio of each member writing personal lines insurance shall be recalculated, in accordance with the procedures set forth in subparagraph (1) but subtracting the premium written by members of the association writing only commercial lines insurance from the aggregate premiums written in the commonwealth by all members of the association.

(ii) The participation ratio of each member writing personal lines insurance as recalculated in clause (i) shall be multiplied by the sum of the total premium written by the association in the commonwealth and 150 per cent of the total industry homeowners credit eligible premium written in credit-eligible zip codes, as defined in this chapter.

(iii) The product of the multiplication described in clause (ii) of this subsection shall be (A) reduced by subtracting therefrom 150 per cent of the homeowners premium written by each member in any credit-eligible zip code in the year of an association loss or (B) shall be increased by adding therefrom 150 per cent of the homeowners premium written by each member in any credit-eligible zip code in the year of an association profit.

(iv) The result of the calculation described in clause (iii) for a carrier, never less than

61 zero, shall be divided by sum of this calculation across all carriers. The resulting ratio shall be
62 the adjusted participation ratio for the member.

63 (v) The adjusted participation ratio of those members whose participation ratio is
64 calculated as provided in this subparagraph shall apply to that portion of the writings, expenses,
65 profits and losses of the association not recovered by applying the participation ratios of the
66 remaining members of the association as calculated, as provided in subparagraph (1).

67 (3) The participation of any member of the association writing personal lines insurance
68 shall be further adjusted if such member has written homeowners insurance during the preceding
69 calendar year, hereafter called the base year, on property that was insured by the association in
70 the year immediately preceding such base year and which is located in any credit eligible zip
71 code, defined as any zip code in the commonwealth where the association market share in such
72 zip code exceeds one and one half times the association's statewide market share and further that
73 the association market share in that zip code shall equal or exceed fifteen per cent, averaged over
74 the latest three calendar years. The participation of such a member shall be adjusted by (i)
75 reducing the amount of premium written by such member in subparagraph (1) by one hundred
76 per cent of the total homeowners insurance premiums written by the member on property
77 described in this clause in the year of an association loss or by (ii) increasing the amount of
78 premium written by such member in subparagraph (1) by one hundred per cent of the total
79 homeowners insurance premiums written by the member on property described in this clause in
80 the year of an association profit. Such adjustment shall not apply to any insurance written on
81 property that was insured by the member or any affiliate or subsidiary member in either of the
82 two years preceding the base year.

83 (f)The association shall annually make a return to the commissioner of revenue on behalf

84 of the members of the association reporting the amount of the aggregate excise imposed on the
85 members under sections twenty-two and twenty-three of chapter sixty-three with respect to
86 policies or certificates of insurance issued by the association on behalf of the members and shall
87 pay to the commissioner at the time fixed for filing such return the amount of the aggregate
88 excise thereby imposed on the members. The association shall give such information on its
89 return as the commissioner may deem necessary for the determination of the excise imposed on
90 the members of the association under sections twenty-two and twenty-three of chapter sixty-three
91 on business transacted by the members directly and through the association. The association
92 shall make payments of estimated tax on behalf of the members of the association with respect to
93 the excise imposed on the members under sections twenty-two and twenty-three of chapter sixty-
94 three with respect to policies or certificates of insurance issued by the association on behalf of
95 the members under procedures established by the commissioner which are similar to the
96 procedures and requirements for corporations to make payments of estimated tax under sections
97 two through ten of chapter sixty-three B.